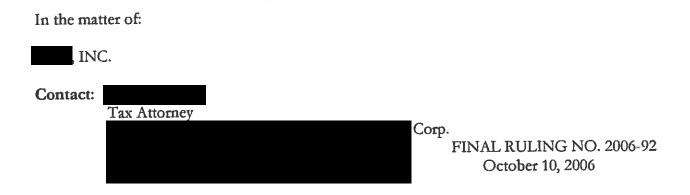


## FINANCE AND ADMINISTRATION CABINET OFFICE OF THE SECRETARY

**Ernie Fletcher**Governor

Room 383, New Capitol Annex Frankfort, Kentucky 40601 Phone: (502) 564-4240 Fax: (502) 564-6785 John R. Farris Secretary



Corporation Income Tax tax years ended December 31, 1997 through 2001

## FINAL RULING

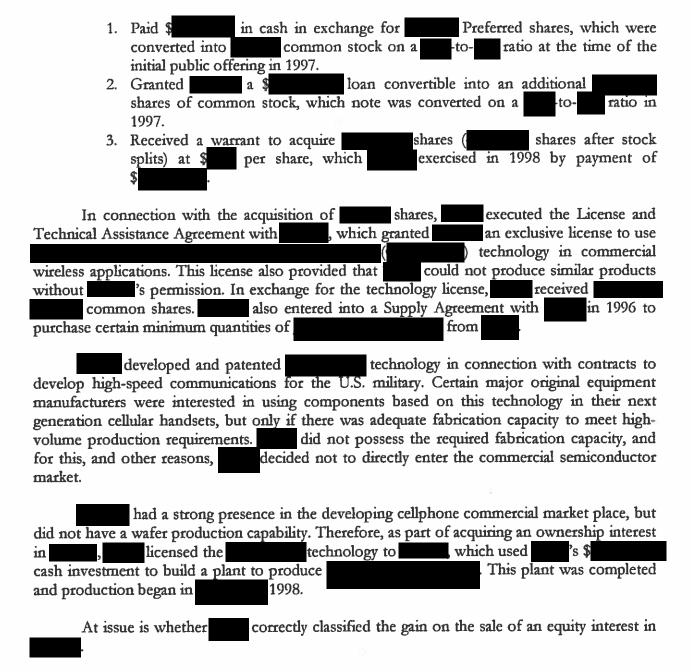
The Kentucky Department of Revenue, (the "Department") performed an examination of Inc.'s (1998, 1998, 1999, 2000 and 2001 state tax returns to determine their accuracy. As a result of the examination, the Department issued income tax assessments for the December 31, 1998 and 1999 tax periods. The following table provides a breakdown of the amount of the corporation income tax assessed and applicable accrued interest and penalty as of October 9, 2006.

YL. VR	TAX	INTERUSI	PEN MIT	ТОТАТ.
1998	\$	\$	\$	\$
1999	\$	\$	\$	\$
Total	9	\$	ş	\$

The records made availa	able and examined by the Department included the federal and
state income tax returns.	also provided a copy of the License and Technical Assistance
Agreement between and	
In June of 1996,	obtained an ownership interest in In acquiring this







The Department classifies the gain on the sale of assets as either business to nonbusiness income in accordance with KRS 141.120(1)(a) and (e) and Regulation 103 KAR 16:060.

KRS 141.120(1)(a) states:

"Business income" means income arising from transactions and activity in the regular course of a trade or business of the corporation and includes income from tangible and intangible property if the acquisition, management, or disposition of the property constitutes integral parts of the corporation's regular trade or business operations.

KRS 141.120(1)(e) states:

"Nonbusiness income" means all income other than business income.

Regulation 103 KAR16:060 Section 5(2) states in part:

Gains or Losses from sale of assets. As a general rule, gain or loss from the sale, exchange or other disposition of real, tangible, or intangible personal property is business income if the property was used by the corporation to produce business income...

Gains on the sale of assets, because of their nomenclature, are not automatically classified as nonbusiness income. Each item must be examined to determine if it should be classified as nonbusiness.

It is position that the gain on the sale of the equity interest in properly classified as nonbusiness pursuant to both the transactional and functional tests.

The Department disagrees with series assertion that these two tests are not met, based on the facts and circumstances of this case, which include:

held a significant portion of outstanding stock (\$\frac{1}{2}\) in .
An employee of sits on the board of granted a loan of \$\frac{1}{2}\].
granted an exclusive licensing agreement to manufacture and use technology in commercial wireless applications.

The Department's position is that, based on Kentucky law and the facts of this case, has an interest in that this interest is significant, would not have granted the exclusive right to produce and use the wafers without this interest, and therefore, the income from the gain on the sale of is correctly classified as business income.

Since the Department determined that incorrectly classified the gain on the sale of an equity interest in as non-business income for the 1999 and 2001 tax periods, the resulting reclassification affected the Kentucky Net Operating Loss Deductions (KNOLD) for all years of the examination and a correction must also be made to the KNOLD. This is the final ruling of the Department of Revenue.

## APPEAL

You may appeal this final ruling to the Kentucky Board of Tax Appeals pursuant to the provisions of KRS 131.110, KRS 131.340-131.365, 103 KAR 1:010 and 802 KAR 1:010. If you decide to appeal this final ruling, your petition of appeal must be filed at the principal office of the Kentucky Board of Tax Appeals, 128 Brighton Park Boulevard, Frankfort, Kentucky 40602-2120, within thirty (30) days from the date of this final ruling. The rules of the Kentucky Board of Tax Appeals, which are set forth in 802 KAR 1:010, require that the petition of appeal must:

- 1. Be filed in quintuplicate;
- 2. Contain a brief statement of the law and facts in issue;
- 3. Contain the petitioner's or appellant's position as to the law and facts; and
- 4. Include a copy of this final ruling with each copy of the petition of appeal.

The petition of appeal must be in writing and signed by the petitioner or appellant. Filings by facsimile or other electronic means shall not be accepted.

Proceedings before the Kentucky Board of Tax Appeals are conducted in accordance with 103 KAR 1:010, 802 KAR 1:010 and KRS 131.340-131.365 and KRS Chapter 13B. Formal hearings are held by the Board concerning the tax appeals before it, with all testimony and proceedings officially reported. Legal representation of parties to appeals before the Board is governed by the following rules set forth in Section 2 (3) of 802 KAR 1:010:

- 1. An individual may represent himself in hearings before the Board;
- 2. An individual who is not an attorney may not represent any other individual, corporation, trust, estate, or partnership before the Board; and
- 3. An attorney who is not licensed to practice in Kentucky may practice before the Board if he complies with Rule 3.030(2) of the Rules of the Kentucky Supreme Court.

You will be notified by the Clerk of the Board of the date and time set for any hearing.

Sincerely,

FINANCE AND ADMINISTRATION CABINET

Lane & Brown

THOMAS H. BROWN

Director

Division of Protest Resolution

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

